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Attorney for Defendant  
EDMUND JEW

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

UNITED STATES OF AMERICA

Plaintiff,

v.

EDMUND JEW,

Defendant.

No. CR 07-0705 SI

**NOTICE OF MOTION AND MOTION  
FOR REQUEST OF EVIDENTIARY  
HEARING**

Date: March 21, 2008

Time: 11:00 a.m.

Ctrm: The Hon. Judge Susan Illston

TO: THE UNITED STATES ATTORNEY THROUGH ASSISTANT U.S. ATTORNEY  
MICHAEL LI-MING WANG AND THE ABOVE-ENTITLED COURT,

PLEASE TAKE NOTICE that on March 21, 2008 at the hour of 11:00 a.m. or soon thereafter before the Honorable Judge Susan Illston, the defendant through his counsel will request an evidentiary hearing to determine whether the government may have engaged in misconduct by failing to investigate the relationship between the defendant's former counsel and a prosecution witness and by failing to disclose to this Court the conflict of interest in the representation of Mr. Jew by his former counsel Steven Gruel. The facts presently known to the defendant raise a grave concern that the government ignored in its investigation of the defendant serious issues regarding the prior relationship between defendant's former counsel and a key government witness; how and why these allegations were initially brought against Mr. Jew by his

1 former attorney and other government witnesses; and how, ultimately, this inaction by the  
2 government violated Mr. Jew's constitutional rights.

3 The evidentiary hearing would allow the defendant and this Court to determine the extent  
4 of the prior relationship between defendant's former counsel Mr. Gruel and Leland Yee, a  
5 government witness, and the extent of knowledge the government had regarding this relationship  
6 and/or the government's choice to ignore the facts in order to build their case against Mr. Jew.  
7 The hearing would also provide a forum for the defendant to determine facts unknown to the  
8 defendant regarding communications between the government, Mr. Gruel, and government  
9 witnesses, Leland Yee and Jaynry Mak. It appears that Mr. Gruel and Mr. Yee had a prior  
10 attorney-client relationship that may have continued throughout Gruel's representation of Mr.  
11 Jew. Though it appears the government was concerned about the impropriety of this  
12 relationship from the beginning, the government stopped its inquiry and never informed this  
13 Court of their concerns. The defendant believes that Mr. Yee, an elected official sitting in the  
14 California legislature, and a former political supporter turned adversary of Mr. Jew, and Mr.  
15 Mak had personal motives to implicate Mr. Jew and that, had the government done what it  
16 should have done, and inquired into Mr. Gruel's relationship to Mr. Yee, it may have changed  
17 the nature of their investigation against Mr. Jew, and ultimately, whether Mr. Jew would have  
18 been charged in this case.

19 The defendant, at this time, is not alleging that the government did, in fact, engage in  
20 misconduct. Rather, the known facts raise serious issues and suspicion. The defendant, rather  
21 than make misconduct allegations, without sufficient evidence, requests an evidentiary hearing to  
22 see if there is a basis for a motion to dismiss.

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 EDMUND JEW

**IN THE UNITED STATES DISTRICT COURT  
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UNITED STATES OF AMERICA

Plaintiff,

v.

EDMUND JEW,

Defendant.

No. CR 07-0705 SI

**MEMORANDUM OF POINTS &  
 AUTHORITIES IN SUPPORT OF  
 DEFENDANT'S MOTION FOR REQUEST  
 OF EVIDENTIARY HEARING**

Date: March 21, 2008

Time: 11:00 a.m.

Ctrm: The Hon. Judge Susan Illston

**STATEMENT OF FACTS**

The facts known to the defendant are very troubling; so troubling, that the defendant maintains that an evidentiary hearing is warranted to determine what was taking place between the government, former counsel for the defendant Steve Gruel, and government witnesses, from the beginning of this investigation against the defendant, and continuing for months until the filing of the Complaint and eventually, the Indictment. It appears from the discovery that the government may have been aware of a prior attorney-client relationship between the defendant's former attorney of record, Steven Gruel, and a government informant and witness, Leland Yee. It also apparent that the government was aware that a serious conflict of interest existed in the

1 representation by Mr. Gruel of Mr. Jew, but did not attempt to remedy the situation and prevent a  
2 violation of Mr. Jew's Fifth Amendment rights, and eventually his Sixth Amendment rights once  
3 criminal proceedings were enacted against the defendant.

4 On May 2, 2007, defense attorney Steven Gruel, reported to the FBI, through an interview  
5 with Agent Bruce Whitten, that he had received information Mr. Jew was involved in an  
6 extortion and bribery scheme. (See Exhibit A.) Mr. Gruel had been contacted by Leland Yee, a  
7 Senator for the State of California, and known political opponent of Mr. Jew. Mr. Yee sought  
8 advice from Mr. Gruel regarding what Yee should do with information that Yee had regarding  
9 allegations of criminal activity by Mr. Jew. Yee told Gruel that Mr. Jew, as Supervisor of  
10 District Four in San Francisco, was taking money from local businesses in his district in  
11 exchange for "promises" that he would help them to maintain their business licenses. Allegedly,  
12 this information came from Jaynry Mak who told Mr. Yee. Mr. Mak is the father of the  
13 candidate (supported by Yee) who ran unsuccessfully against Mr. Jew for the District Four seat.  
14 Mr. Gruel took this information and called the FBI to inform them of the alleged criminal  
15 activity. Gruel told the FBI that there was a business in Mr. Jew's District that was "out of code"  
16 and would be closed, but the owner's were approached by Mr. Jew who told them he could  
17 "make the problem go away" for \$20,000 if the owner brought Jew the cash to his flower shop.  
18 The FBI 302 makes clear that Gruel presented this information as fact. The information provided  
19 by Mr. Gruel instigated the federal criminal investigation against Mr. Jew. Prior to receipt of this  
20 information, Mr. Jew was not under investigation by the federal government. The FBI 302  
21 summarizing Gruel's statement does not mention Gruel's prior relationship with Leland Yee or  
22 why Yee would contact Gruel rather than going directly to the FBI or local law enforcement  
23 authorities.

24 Just over two weeks after going to the FBI with information about the alleged criminal  
25 activities committed by Mr. Jew, on May 20, 2007, attorney Steven Gruel entered into a written  
26 contract with Mr. Jew for representation involving the federal criminal investigation against Mr.  
27

1 Jew, that Gruel himself had initiated, and the potential federal charges. Contained in this  
2 contract was a “disclosure and waiver.” (See Exhibit B.) The “disclosure and waiver” stated  
3 that an “individual” had contacted Gruel and told Gruel that Mr. Jew had been involved in “an  
4 alleged unlawful attempt to obtain money from a business with respect to a San Francisco  
5 Permit.” The statement stated that Gruel had verbally passed this information on to the FBI. The  
6 statement did not mention the name of the individual who contacted Gruel with this information  
7 or Gruel’s prior, and current, relationship with this individual, or the antagonistic relationship  
8 between Yee, Mak, and Jew. Further, Mr Jew was referred to attorney Gruel by Barbara  
9 Meskunas, a close associate of Leland Yee and acquaintance of Gruel. At the time of the referral  
10 she was employed as an aide to Supervisor Jew.

11 In a letter dated May 28, 2007 by AUSA Michael Wang to Steve Gruel, it is clear that  
12 discussions have taken place between Gruel and Wang concerning Gruel’s representation of Mr.  
13 Jew. (See Exhibit C). Mr. Wang states:

14 “. . .in response to your letter of May 23, 2007, expressing your intention to continue  
15 representing Ed Jew, as well as your opinion that you are not a witness in this matter in  
spite of your role in referring the matter to law enforcement.” (Id.)

16 Mr. Wang requests a copy of the written waiver that Gruel obtained from Mr. Jew. Mr.  
17 Wang also requests the name and a description of the role an “associate counsel” will have in  
18 representing Mr. Jew that Gruel states he has hired “to ensure that any appearance of impropriety  
19 will be dissipated.” (Id.)

20 On June 12, 2007, Mr. Wang renews his request for the written waiver from Gruel. In the  
21 letter he states, “Absent that waiver, I may be forced to file an ex parte submission concerning  
22 your purported representation of Mr. Jew at the appropriate time in the future.” (See Exhibit D.)

23 Gruel responded to the above requests on June 14, 2007. In this letter to Wang, he states  
24 that he does not believe there is a conflict, but that he will obtain permission from Mr. Jew to  
25 disclose the waiver- a waiver that was only obtained by Mr. Gruel “merely in an abundance of  
26 caution.” (See Exhibit E.)

1 On July 4, 2007, Gruel forwards a redacted copy of his fee agreement with Mr. Jew. In  
2 this letter he tells Mr. Wang that he does not agree that Wang is entitled to this redacted  
3 document nor does he believe that a conflict exists. (See Exhibit F.) The disclosure does not  
4 mention the name of the individual who told Gruel the information he passed on to the  
5 government nor does it mention the relationship that Gruel had with this individual. There is no  
6 statement that Jew agreed with the exchange of information with the government and his attorney  
7 or that he knew the identity of the person who had contacted Gruel- an influential political  
8 enemy.

9 On September 20, 2007, a Complaint was filed against Mr. Jew alleging violations of 18  
10 U.S.C. § 1341 and 1346: Mail Fraud. On October 2, 2007, Leland Yee was interviewed by the  
11 FBI regarding the alleged criminal activity committed by Ed Jew. (See Exhibit G.) The FBI 302  
12 provided by the government does not mention anything about Yee's previous conversation(s)  
13 with Mr. Gruel, their prior relationship or Yee's motive to fabricate evidence and false charges  
14 against Supervisor Jew.

15 On November 6, 2007, an Indictment was filed against Mr. Jew charging him with  
16 violations of 18 U.S.C. § 1341 and 1346: Mail Fraud; 18 U.S.C. § 666(a)(1)(B): Bribery; and 18  
17 U.S.C. § 1951(a): Extortion Under Color of Official Right. On December 11, 2008, Stuart  
18 Hanlon filed papers to substitute in as attorney of record.

19 The above facts raise several questions regarding what was really occurring from the  
20 moment these accusations were made against the defendant until the filing, months later, of the  
21 Indictment against Mr. Jew. It is not only concerning, but baffling, that the accusations that  
22 began this entire investigation came from Mr. Jew's own attorney. It is clear, through the letters  
23 Wang sent to Gruel, that this also concerned the government. However, once the "waiver" was  
24 produced, it seems the government turned a blind eye to this conflict and to investigating the  
25 prior relationship between Gruel and Yee and what, if any, continuing relationship they had as  
26 Gruel was representing Mr. Jew. The government never questions Gruel or Yee during their  
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1 interviews about their prior relationship; what type of relationship that they continued to maintain  
2 after Gruel was hired by Mr. Jew; or whether Gruel advised Mr. Yee about debriefing with the  
3 government or possible testimony before the grand jury<sup>1</sup>. The defendant asserts that, not only  
4 should the government have done it's duty to ensure there were no improprieties in the possible  
5 dual representation by Gruel of both Yee and Mr. Jew by questioning both Gruel and Yee, the  
6 government should have brought this conflict to the Court's attention to ensure that the Court,  
7 and Mr. Jew, were fully aware of the potential, and actual, conflicts. Furthermore, the defendant  
8 believes that had the government investigated further into this conflict, it would have also  
9 uncovered the political motivations behind these accusations against Mr. Jew which may have  
10 changed the entire nature of this case. The defense believes that there existed at the time a  
11 business and political relationship between Assemblyman Yee and the Quickly owners and  
12 suppliers, the alleged victims of extortion and bribery by Mr. Jew.

13 An evidentiary hearing would allow the defendant to determine if Gruel and Yee had a  
14 prior attorney-client relationship; if Gruel and Yee continued this relationship during his  
15 representation of Mr. Jew; if Yee had a relationship with the Quickly owners and suppliers and if  
16 Gruel knew of this ; if Gruel and Yee discussed Yee's debriefing with the FBI in October 2007  
17 or, perhaps, his testimony in front of the grand jury. It is unknown to the defendant whether Mr.  
18 Yee testified at the grand jury, but clearly any discussions between Gruel and Yee about his  
19 testimony when Gruel is representing Mr. Jew creates a situation where Gruel's continued  
20 representation of Mr. Jew, while representing a government witness in the case against Mr. Jew,  
21 would violate Mr. Jew's constitutional rights if the government was aware, or should have been  
22 aware, of these facts and did nothing to bring this to the Court's attention or to prevent this from  
23 occurring. Furthermore, an evidentiary hearing may show that the government's failure to  
24 investigate these issues not only may have been misconduct on their part, but that the

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26 <sup>1</sup> The defendant does not know if Mr. Yee testified before the grand jury that indicted  
27 Mr. Jew.

1 government's failure to act allowed for a criminal investigation of Mr. Jew to take place that was  
2 tainted from the beginning by Leland Yee and Jaynry Mak.

3 **ARGUMENT**

4 The facts known to the defendant are unnerving and raise an implication that there are  
5 many facts that remain unknown that may show the defendant's constitutional rights were  
6 violated. A defendant's Fifth Amendment rights are violated when the government interferes  
7 with the attorney-client relationship which results in ineffective assistance of counsel or when the  
8 government engages in outrageous misconduct. United States v. Marshank, 777 F.Supp. 1507  
9 (N.D. Cal. 1991) Courts have held that, although an indictment may be dismissed only in  
10 flagrant cases of prosecutorial misconduct, even unintentional misconduct may be sufficient.  
11 U.S. v. Samango, 607 F.2d 877 (1979). What is known, is that the government knew that Mr.  
12 Jew was being represented by the exact person who started the criminal investigation against  
13 him. What isn't known is whether the government knew that Leland Yee and Steven Gruel had  
14 a prior attorney-client relationship or whether the government chose to turn their heads and look  
15 the other way because Yee is a witness in their case against Mr. Jew. It is highly questionable  
16 that neither Gruel or Yee were asked about their prior relationship during their interviews or in  
17 the letters from AUSA Wang. No questions are asked, at least according to the discovery in  
18 possession of the defendant, as to why Yee chose Gruel to contact with this information, what  
19 type of prior relationship was established between attorney Gruel and Yee or whether the  
20 relationship between Gruel and Yee continued after he began representing Mr. Jew.

21 The facts raise an inference that the government had an affirmative duty to inform this  
22 Court that there was a significant conflict in the representation of Mr. Gruel in that Mr. Gruel  
23 referred the alleged criminal activity to the FBI; Gruel had a prior attorney-client relationship  
24 with a key government witness; and that Gruel is a witness against Mr. Jew, his own client. All  
25 of these factors were known, or should have been known, to the government, yet the government  
26 did not attempt to make these inquiries or inform this Court. The government "is not entitled to  
27



1 take advantage of conflicts of interest which the defendant and the court are unaware.” United  
2 States v. Marshank, 777 F.Supp. 1507 (N.D. Cal. 1991) (Fix cite) The government should have  
3 been concerned that the “waiver” did not include the identity of the source- Leland Yee- nor any  
4 further acknowledgment by Mr. Jew that he was aware of the full extent of the conflict or the  
5 communications between the government and his attorney.

6 The defendant’s Sixth Amendment rights, which attached when criminal proceedings  
7 against Mr. Jew were enacted, may have also been violated. The defendant has the right to  
8 counsel “ whose loyalties are undivided” and the government may not circumvent this right.  
9 United States v. Partin, 601 F.2d 1000, 1006 (9th Cir. 1979). In the present case, an evidentiary  
10 hearing would enable the defendant to determine if such an intrusion by the government took  
11 place. The complaint was filed against Mr. Jew in September. Leland Yee was interviewed by  
12 the FBI in October.<sup>2</sup> The Indictment against Mr. Jew was filed in November. The defendant  
13 questions whether Gruel was still advising Yee during this time, thus representing a witness in a  
14 case against his own client, and whether the government knew about this relationship or failed to  
15 investigate it in order to continue with it’s case against Mr. Jew. Both scenarios, if either are  
16 correct, create a situation where the government impeded the protections afforded to Mr. Jew by  
17 the Sixth Amendment.

18 An evidentiary hearing into what facts were known or unknown to the government from  
19 the time Gruel gave his statement to the FBI that led to the investigation against Mr. Jew may  
20 also uncover an investigation of Mr. Jew by the government that was clouded by political  
21 backstabbing and manipulation from key government witnesses. This appears to have been a  
22 calculated attack on Mr. Jew that was organized from the beginning by Mr. Yee, Jaynry Mak and  
23 the alleged victims. The present circumstances that Yee, who has a relationship with the victims,  
24 is told by Mak, the father of Mr. Jew’s political opponent, that Mr. Jew is committing these  
25 alleged crimes, and then Yee goes to Gruel who then becomes Mr. Jew’s attorney, creates more

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26  
27 <sup>2</sup> Again, it is also possible that Mr. Yee testified at the grand jury during this time.

1 than a suspicion that calculated orchestrating was going on here. The questions remaining to be  
2 answered, that are unknown to the defendant, is whether the government knew what was  
3 occurring and chose to ignore it, was fully aware and actively participating , or simply did not  
4 know what was going on and has been itself used in this scheme.

5 The defendant anticipates the following witnesses would be necessary at an evidentiary  
6 hearing:

- 7 1. Steven Gruel
- 8 2. Leland Yee
- 9 3. Barbara Meskunas
4. Michael Wang
5. Bruce Whitten
6. Edmund Jew

### 11 CONCLUSION

12 For the above reasons, Mr. Jew respectfully requests this Court grant the defendant an  
13 evidentiary hearing to determine whether Mr. Jew's constitutional rights have been violated.

14  
15 Dated: February 19, 2008

Respectfully Submitted,

16 s/Stuart Hanlon  
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UNITED STATES OF AMERICA

Plaintiff,

v.

EDMUND JEW,

Defendant.

) No. CR 07-0705 SI

) **DECLARATION OF COUNSEL IN**  
) **SUPPORT OF DEFENDANT'S MOTION**  
) **FOR REQUEST OF EVIDENTIARY**  
) **HEARING**

) Date: March 21, 2008

) Time: 11:00 a.m.

) Ctrm: The Hon. Judge Susan Illston

I, Stuart Hanlon, declare under penalty of perjury as follows:

1. I am an attorney duly licensed to practice law in the Northern District of California and before this Court. I am the attorney of record for the defendant, Edmund Jew.
2. I am informed and believe after speaking with my client that there was not full disclosure of all relevant facts by Steven Gruel to Mr. Jew in the waiver signed by Mr. Jew and in the discussions between Mr. Gruel and Mr. Jew regarding the potential conflict.
3. I am informed and believe after speaking with my client that Mr. Jew was not told by Steven Gruel the identity of the person who informed Mr. Gruel about Mr.

Jew's alleged criminal activity, Leland Yee, when Mr. Jew signed the waiver of conflict.

4. I am informed and believe after speaking with my client and conducting investigation that Leland Yee is a political enemy of Mr. Jew.

5. I am informed and believe after speaking with my client and conducting investigation that Leland Yee has close ties to the alleged victims in this case.

6. I am informed and believe after speaking with my client and conducting investigation that Barbara Meskunas referred Mr. Jew to Steven Gruel and that Ms. Meskunas has a close relationship with Leland Yee and is an acquaintance of Steven Gruel.

7. I am informed and believe after speaking with my client and conducting investigation that Jaynry Mak is the father of the woman who ran against Mr. Jew in the election for District Four Supervisor.

8. I am informed and believe through my investigation of this case that Steven Gruel and Leland Yee had a prior business and personal relationship and in all likelihood an attorney-client relationship prior to May 2007.

9. All of the documents attached to this motion were given over in discovery to former counsel Steven Gruel by Mr. Wang who then provided then to me.

Executed this 13th day of February, 2008, at San Francisco, California.

s/Stuart Hanlon  
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